Supreme Court, U.S.
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No. 10-1229

IN THE
SUPREME COURT OF THE UNITED STATES

ALLAN BROUGHMAN,
Petitioner

v.

LARRY S. CARVER

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1) Whether, as a matter of law, Broughman was required to be licensed as a firearm "dealer" (person "engaged in the business of . . . making or fitting special barrels, stocks, or trigger mechanisms to firearms," 18 U.S.C. § 921(a)(11)(B)), not a firearm "manufacturer" (person "engaged in the business of manufacturing firearms . . . for purposes of sale or distribution," 18 U.S.C. § 921(a)(10)) , where he made and fitted special barrels and stocks to firearms which he sold.

PARTIES TO PROCEEDING

Petitioner Allan Broughman makes and fits special barrels and stocks to firearms which he sells. He is currently licensed as a firearms manufacturer. Respondent Larry S. Carver is an Industry Operations Investigator for the Bureau of Alcohol, Tobacco, Firearms, & Explosives and appears in his official capacity. There are no corporate entities involved in this case, and no Rule 29.6 disclosure statement is required.

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The Opinion of the United States Court of Appeals for the Fourth Circuit is published at 624 F.3d 670 (4th Cir. 2010) and is reprinted in the Appendix ("App.") at App. 1a. The opinion of the district court is not reported and is reprinted in the Appendix at App. 18a.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit affirmed the judgment of the district court in a published decision on November 15, 2010. 624 F.3d 670 (4th Cir. 2010); App. 1a. A timely filed petition for rehearing was denied on January 13, 2011. App. 28a. This Court has jurisdiction under 28 U.S.C.§ 1254(l).

STATUTE

> (10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.
>
> (11) The term "dealer" means
>
> (A) any person engaged in the business of selling firearms at wholesale or retail,
> (B) any person engaged in the business of

> repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or
>
> (C)any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

18 U.S.C. § 921(a)(10) & (11).

STATEMENT OF THE CASE

Facts

Allan Broughman is a federally licensed firearms manufacturer, but was a federally licensed firearms dealer until directed by Larry S. Carver (an Industry Operations Investigator for the Bureau of Alcohol, Tobacco, Firearms, & Explosives (hereinafter "ATF")) to obtain a manufacturer's license. The activities in which Broughman engaged which caused Carver to direct Broughman to obtain a manufacturer's license are as follows: Broughman purchases complete firearms actions (frames or receivers[1] with internal parts) from other licensees, and purchases rifled barrels from other sources. He threads and chambers the barrels to fit the actions, blues the actions, and makes wooden stocks which he fits to the actions and barrels. No machining, drilling,

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[1] A "firearm frame or receiver" is "[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward position to receive the barrel." 27 C.F.R. § 478.11.

or other alterations is done to the actions. The firearms are then sold to customers.

Following an inspection of Broughman's inventory and records conducted by Carver in or about July 27-30, 2006, Carver issued a Report of Violations to Broughman on 7/31/06. Violation Number 1 alleged that Broughman "failed to obtain a license to manufacture firearms." Carver directed Broughman to obtain a manufacturer's license if he wished to continue his activities. To comply with Carver's command to him, Broughman obtained a manufacturer's license.

By letter of September 1, 2006, Broughman, by counsel, requested Carver to remove Violation Number 1 from the Report of Violations as Broughman does not manufacture firearms and does not need a license to manufacture firearms. By letter of September 21, 2006, ATF Area Supervisor Stephen B. Albro declined to remove Violation Number 1 from the Report of Violations.

As a result of Carver's command, Broughman continues to maintain a manufacturer's license, but would obtain a dealer's license except for Carver's command.

Proceedings in the Courts Below

On October 16, 2008, Broughman filed a complaint against Carver, seeking a declaratory judgment that Broughman was a "dealer" within the meaning of 18 U.S.C. § 921(a)(11)(B), not a "manufacturer" within the meaning of 18 U.S.C. § 921(a)(10).[2]

After Carver filed a motion to dismiss the initial complaint for lack of jurisdiction, Broughman sought leave to file an amended complaint, which the district court permitted.[3] Carver then withdrew the motion to dismiss and filed a motion for summary judgment, which the district court granted on August 14, 2009 after briefing by the parties. App. 17a. Broughman timely filed a motion to alter or amend the judgment, which the district court denied on September 8, 2009. App. 15a. A timely notice of appeal was filed was filed on September 18, 2009.

The United States Court of Appeals for the Fourth Circuit affirmed the district court in a reported decision dated November 15, 2010, 624 F.3d 670 (4th Cir. 2010). App. 1a. A timely filed petition for rehearing was denied on January 13, 2011. App. 28a.

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[2] The action was initially brought pursuant only to 28 U.S.C. § 2201(a).

[3] The amended complaint alleged that the action was brought pursuant to 28 U.S.C. § 2201(a) and 5 U.S.C. § 702.

THE WRIT SHOULD BE GRANTED TO RESOLVE WHETHER FEDERAL FIREARMS LICENSEES WHO ENGAGE IN MAKING AND FITTING SPECIAL BARRELS AND STOCKS MUST BE LICENSED AS MANUFACTURERS OR DEALERS

Introduction

The court of appeals held that Broughman was a "manufacturer" within the meaning of 18 U.S.C. § 921(a)(10), not a "dealer" within the meaning of 18 U.S.C. § 921(a)(11)(B). In so holding, the court of appeals has undermined — indeed, eviscerated — Congress' explicit choice that persons who are engaged in the business in which Broughman is engaged, making and fitting special barrels and stocks to firearms, are to be licensed as dealers, not manufacturers, notwithstanding the fact that their activities, as a general matter, might be considered manufacturing.

The differences between a manufacturer's license and a dealer's license are not trivial. First, the licensing fees are higher for a manufacturer, *cf.* 18 U.S.C. § 923(a)(1)(B) (manufacturer of firearms other than destructive devices must pay a fee of $50 per year) to 18 U.S.C. § 923(a)(3)(B) (dealer in firearms other than destructive devices must pay a fee of $200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years). Second, pursuant to 18 U.S.C. § 923(i), a manufacturer must engrave or cast a serial number on the receiver or frame of the weapon; a dealer has no such duty. Third, a manufacturer is subject to excise taxes under 26

U.S.C. § 4181[4] and, as a result, to the quarterly reporting requirements imposed by 27 C.F.R. § 53.151 and § 53.153.[5]

To resolve the important question of federal law of whether the court of appeals has upset the balance that Congress struck, this Court should grant this petition.

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[4] "There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent -
Pistols.
Revolvers.
Articles taxable at 11 percent -
Firearms (other than pistols and revolvers)."

[5] 27 C.F.R. § 53.151 provides:

> Liability for tax imposed under chapter 32 of the Code shall be reported on TTB Form 5300.26, Federal Firearms and Ammunition Excise Tax Return. Except as provided in paragraphs (a)(2) and (b) of this section, a return on Form 5300.26 shall be filed for a period of one calendar quarter.

27 C.F.R. § 53.153 provides:

> Each return required to be made under §53.151(a) for a return period of one calendar quarter shall be filed on or before the last day of the first calendar month following the close of the period for which it is made.

Broughman Is A "Dealer" Within The Meaning Of 18 U.S.C. § 921(a)(11)(B)

18 U.S.C. § 921(a)(11)(B) defines as a "dealer" a person who is "engaged in the business of . . . making or fitting special barrels, stocks, or trigger mechanisms to firearms." A "manufacturer" is defined as "any person engaged in the business of manufacturing firearms . . . for purposes of sale or distribution . . . ." 18 U.S.C. § 921(a)(10). The term "manufacturing" is not defined by statute or regulation. The court of appeals concluded that Broughman was a "manufacturer," and thus had to be licensed as a manufacturer, because:

> manufacturing firearms under § 923(a) entails assembling a firearm's individual components so as to render the firearm "suitable for use." The manner in which Broughman conducts his gun business; *i.e.*, "build[ing] custom bolt action rifles" by threading and chambering barrels to fit firearms actions, bluing the actions, and making and fitting stocks to the actions and barrels; undoubtedly places him within the statutory category of a firearms "manufacturer."

624 F.3d at 675-676.

In reaching this conclusion, the court of appeals ignored the plain language of 18 U.S.C. § 921(a)(11)(B) ("dealer" is a person who is "engaged in the business of . . . making or fitting special barrels, stocks, or trigger

mechanisms to firearms") by rejecting application of the well-established canon of statutory construction that the specific governs over the general, citing *Varity Corp.* v. *Howe*, 516 U.S. 489 (1996) as holding merely that canons of construction "are simply rules of thumb which will sometimes help courts determine the meaning of legislation." 624 F.3d at 676 (quoting *Varity Corp.*, 516 U.S. at 511). Further, the court of appeals stated:

> We have characterized the canon in question as merely "a warning against applying a general provision when doing so would undermine limitations created by a more specific provision." *Id.* Section 921(a)(11)(B)'s definition of a firearms "dealer" does not, however, impose any clear limitations that would be undermined by adhering to the plain text of § 921(a)(10).

624 F.3d at 676.

The court of appeals erred in not applying the canon that the "specific governs the general" in interpreting the scope of the term "manufacturer as used in § 921(a)(10).

The full quotation from *Varity Corp.* is as follows:

> Canons of construction, however, are simply "rules of thumb" which will sometimes "help courts determine the

> meaning of legislation." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992). To apply a canon properly one must understand its rationale. This Court has understood the present canon ("the specific governs the general") as a warning against applying a general provision when doing so would undermine limitations created by a more specific provision. See, *e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-385 (1992); *HCSC-Laundry v. United States*, 450 U.S. 1, 6, 8 (1981); *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228-229 (1957).

516 U.S. at 511.

The cited cases make clear that "the specific governs the general" is not a canon that may sometimes be applied where there is a specific provision that addresses the same subject matter as a general provision.

Morales, supra, stated that "it is a commonplace of statutory construction that the specific governs the general . . . ." 504 U.S. at 384. *HCSC-Laundry, supra,* held even more emphatically that "it is a basic principle of statutory construction that a specific statute . . . controls over a general provision . . . ." 450 U.S. at 6. Similarly, *Fourco Glass Co., supra,* held:

> [T]he law is settled that "However inclusive may be the general language of

> a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.'" (Citations omitted).

353 U.S. at 228-229.

Guidry v. Sheet Metal Workers National Pension Fund, 493 U.S. 365 (1990), likewise stated that it is:

> an elementary tenet of statutory construction that "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one . . . ." (Citation omitted).

493 U.S. at 375.

In light of this long-standing canon of statutory construction — which has variously been described as "a commonplace of statutory construction," "a basic principle of statutory construction," and "an elementary tenet of statutory construction" — the court of appeals erred in not applying the canon to 18 U.S.C. § 921(a)(11)(B) and 18 U.S.C. § 921(a)(10).

The court of appeals' explanation for not adhering to the "specific governs the general" canon was that the rationale for the canon was "a warning

against applying a general provision when doing so would undermine limitations created by a more specific provision" (*Varity Corp., supra,* 516 U.S. at 511) and that the definition of "dealer" in § 921(a)(11)(B) "does not, however, impose any clear limitations that would be undermined by adhering to the plain text of § 921(a)(10)." 624 F.3d at 676. This conclusion is not correct.

In enacting § 921(a)(11)(B), Congress plainly determined that persons engaged in certain narrowly defined manufacturing-type activities — "making or fitting special barrels, stocks, or trigger mechanisms to firearms" — were not to be *licensed* as manufacturers, even if their activities were manufacturing-type activities.[6] By requiring a person who engages in those activities to obtain a manufacturers license, the court of appeals has undermined — indeed, eviscerated — Congress' explicit choice.[7] In fact, the court of appeals'

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[6] The court of appeals stated that "[a]dopting Broughman's position . . . would go a long way towards reading the GCA's 'manufacturing' provisions out of the Act." 624 F.3d at 677. Because Broughman argues only that making or fitting special barrels and stocks to firearms does not require him to be licensed as a manufacturer, adopting his position will have little impact on the GCA's "manufacturing" provisions since persons engaged in all other manufacturing-type activities, *e.g.*, production of frames and receivers and assembly of complete actions into frames and receivers, will continue to need manufacturers licenses. In any event, a court may not be concerned with whether the definition of "manufacturing" is not sufficiently inclusive; that is a policy judgment made by Congress.

[7] The court of appeals states that "[s]everely limiting the application of the GCA's 'manufacturing' provisions would be

holding makes the definition of "dealer" at issue here (§ 921(a)(11)(B)) a complete nullity, with no effect whatever because any person who meets that definition would, under the court of appeals' reasoning, be considered a manufacturer and would be required to obtain a manufacturer's license.[8] In so doing, the court of appeals has contravened a "cardinal principle of statutory construction" that a court:

> must "'give effect, if possible, to every clause and word of a statute.'" *United States v. Menasche*, 348 U.S. 528, 538-539 (1955) (quoting *Montclair v.*

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inconsistent with" the GCA's goals of "'ensur[ing] that weapons [are] distributed through regular channels and in a traceable manner,' thus making 'possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms' (citation omitted)" and "would serve to 'undermine the congressional policies' underlying the Act." 624 F.3d at 677. This is not correct because a dealer and manufacturer are required to maintain the same records of acquisition and disposition. See 27 C.F.R. § 478.125(i).

[8] *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U.S. 1 (1931), explained that the "application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article" (283 U.S. at 12) and gave as an example of a process which was *not* manufacturing the "'cleaning off the outer layer of [a] shell by acid, and then grinding off the second layer by an emery wheel, so as to expose the brilliant inner layer' . . . ." *Id.* It was entirely logical, therefore, for Congress to have established that "making or fitting special barrels, stocks, or trigger mechanisms to firearms" was not manufacturing and to have included such activities as the activities of a "dealer."

Ramsdell, 107 U.S. 147, 152 (1883)).

Williams v. Taylor, 529 U.S. 362, 404 (2000).

The court of appeals states that its decision does not render § 921(a)(11)(B) a nullity because:

> Circumstances certainly exist in which an individual would meet § 921(a)(11)(B)'s definition of a firearms "dealer" without qualifying as a firearms "manufacturer" under § 921(a)(10). Firearms "dealers" under § 921(a)(11)(A) and (C) are not firearms "manufacturers" and the same is true of many "dealers" under subsection (B). Certainly if Broughman only repaired firearms, fitted new stocks on rifles, or interchanged choke barrels, he would fit the definition of § 921(a)(11)(B) "dealer" but not that of a § 921(a)(10) "manufacturer."

624 F.3d at 676.

The court of appeals is correct that, "if Broughman only repaired firearms" or if he "fitted new stocks on rifles," he would fall within the definition of "dealer" in § 921(a)(11)(B) but not that of "manufacturer" in § 921(a)(10).[9] For the same reason, *i.e.*, the language of § 921(a)(11)(B), because

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[9] It is difficult to reconcile this part of the court of appeals' opinion with its judgment as Broughman *does* fit new stocks on rifles and thus should not be considered a "manufacturer."

Broughman also makes and fits special barrels,[10] he falls within the definition of "dealer" in § 921(a)(11)(B), but not the definition of "manufacturer" in § 921(a)(10).[11]

The other explanation given by the court of appeals to support its holding is that:

> Congress knows how to carve out firearms "dealers" from firearms "manufacturers" when it wishes to prevent any overlap of the two categories. Congress did so in the National Firearms Act of 1934 when it enacted mutually exclusive definitions of a firearms "manufacturer" and a firearms "dealer." See 26 U.S.C. § 5845(k) (stating that a "dealer" within the meaning of the National Firearms Act of 1934 is "any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms")(emphasis added). Congress has not similarly worded the GCA.

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[10] The court of appeals' reference to "interchang[ing] choke barrels" is unclear because the GCA does not mention "choke barrels."

[11] If the court of appeals was suggesting that Broughman is not a "dealer" within the meaning of § 921(a)(11)(B) because he not only makes/fits special stocks, but also makes/fits special barrels, a plain reading of § 921(a)(11)(B) makes clear that a person is a "dealer" if he engages in any one, or a combination of, the activities set forth in § 921(a)(11)(B).

624 F.3d at 676.

That Congress did not use the same definitional structure in the GCA as it did the National Firearms Act ("NFA") was undoubtedly because, in the GCA, unlike in the NFA, Congress did not intend to enact wholly mutually exclusive definitions of "manufacturer" and "dealer." Rather, in the GCA, unlike in the NFA, Congress only sought to exclude from licensing as a "manufacturer" a limited number of manufacturing-type activities, *i.e.*, "making or fitting special barrels, stocks, or trigger mechanisms to firearms." Congress was certainly not required to follow the definitional structure in the NFA, but was free to allow some overlap in the GCA definitions which it precluded in the NFA definitions. Thus, because "Congress expresses its intent through the language it chooses," *INS v. Cardoza-Fonseca,* 480 U.S. 421, 432, n.12 (1987), Congress' intent with respect to § 921(a)(11)(B) cannot be determined by what Congress enacted in another statute (in a different title) and did not enact in § 921(a)(11)(B). As a result, the language that Congress elected to use in § 921(a)(11)(B) must be given effect and no inference may be drawn from the fact that language which is found in the definition of "dealer" in 26 U.S.C. § 5845(k) is not included in § 921(a)(11)(B).

The error in the court of appeals' decision is made glaringly apparent by 18 U.S.C. § 923(i),[12] which

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[12] "The meaning — or ambiguity — of certain words or phrases may only become evident when placed in context." *FDA v. Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132 (2000).

requires a licensed manufacturer to identify each firearm manufactured "by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe . . . ." The regulation which implements § 923(i) requires that a licensed manufacturer also engrave the model of the firearm, its caliber or gauge, the licensed manufacturer's name and the city and state where he maintains his place of business. 27 C.F.R. § 478.92(a)(1). Moreover, a frame or receiver which is not "a component part of a complete weapon . . . must be identified as required by this section." 27 C.F.R. § 478.92(a)(2).

Accordingly, under the court of appeals' conclusion, if Broughman is a manufacturer, and acquired a firearm (or even merely a frame or receiver) with an existing serial number, fitted a new stock and barrel, and sold the firearm, he would be required to engrave the firearm with *another* serial number, as well as the model of the firearm, its caliber or gauge, and his name and the city and state where he maintains his place of business. Indeed, each time a firearm was purchased by a licensee and a new stock (or a new barrel) was fitted, yet another serial number, as well as the model of the firearm, its caliber or gauge, and the licensee's name and the city and state where he maintains his place of business, would have to be engraved. It was to prevent this nonsensical re-identification process that Congress permitted dealers to acquire firearms and make and fit special barrels,

stocks, or trigger mechanisms, and sell them.[13]

CONCLUSION

This Court should grant this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

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April, 2011

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[13] The court of appeals notes that "requiring Broughman to engrave his identifying information on the bolt-action rifles he creates is consistent with the existing regulatory scheme" because Broughman "may apply to ATF for a variance allowing them to use 'other means of identification' . . . ." 624 F.3d at 677, n.5. 18 U.S.C. § 923(i) does not, however, authorize ATF to issue variances. Thus, by misapplying the term "manufacturer" to Broughman, the ATF has to misconstrue § 923(i) to compensate.

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ALLAN BROUGHMAN,

Plaintiff-Appellant,

v. No. 09-2095

LARRY S. CARVER, INDUSTRY OPERATIONS INVESTIGATOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Virginia, at Roanoke
Samuel G. Wilson, District Judge.
(7:08-cv-00548-sgw-mfu)

Argued: September 23, 2010

Decided: November 15, 2010

Before: GREGORY and AGEE, Circuit Judges, and
Richard L. Voorhees, United States District Judge
for the Western District of North Carolina,
sitting by designation.

Affirmed by published opinion. Judge Agee wrote the opinion, in which Judge Gregory and Judge Voorhees joined.

COUNSEL

ARGUED: Richard E. Gardiner, Fairfax, Virginia, for Appellant. Thomas Linn Eckert, Office of The United States Attorney, Roanoke, Virginia, for Appellee. **ON BRIEF:** Timothy J. Heaphy, United States Attorney, Roanoke, Virginia, for Appellee.

OPINION

AGEE, Circuit Judge:

Allan Broughman operated a gun shop pursuant to a dealer's license issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). After performing a routine inspection of Broughman's shop in 2006, ATF investigator Larry Carver issued a report of violations concluding, among other things, that in order to lawfully conduct his business Broughman needed to obtain a manufacturer's license from ATF. Although Broughman administratively challenged Carver's finding, it was upheld by Carver's supervisor.

Broughman subsequently filed suit in the United States District Court for the Western District of Virginia, seeking a declaratory ruling that he is a "dealer," not a "manufacturer," within the meaning of the Gun Control Act of 1968 ("GCA" or "the Act"). Concluding that Broughman met the GCA's definition

of a firearms "manufacturer," the district court granted summary judgment in favor of ATF. For the *673 reasons set forth below, we affirm the judgment of the district court.

I.

We begin with a brief summary of the facts and procedural history of this case. Broughman operates a gun shop out of the basement of his home in Covington, Virginia. Rather than maintain an inventory of firearms, Broughman's business is typically comprised of both repairing firearms and marketing and selling custom order firearms that he constructs. As the district court noted, "[e]ven by his own words, Broughman 'build[s] custom bolt action rifles' by assembling the component parts of a firearm." *Broughman* v. *Carver*, No. 7:08-CV-0548, 2009 WL 2511949, at *2 (W.D.Va. Aug.14, 2009).

The parties agree that in constructing such firearms "Broughman purchases complete firearms actions (frames or receivers with internal parts) from other licensees, and purchases rifled barrels from other sources. He threads and chambers the barrels to fit the actions, blues the actions, and makes wooden stocks which he fits to the actions and barrels." Joint Appendix ("J.A.") at 6.

During his inspection of Broughman's shop, Carver observed Broughman assemble a barrel, receiver, and stock for a customer. Carver's subsequent conversation with Broughman confirmed that he "assembled ... firearms and sold them for several thousand dollars" a piece. *Id.* at 43. Subsequently,

Carver issued a report of violations that charged Broughman with "manufacturing" firearms without a manufacturer's license. Broughman's counsel sent a letter to ATF requesting the violation be removed on the grounds that Broughman did "not manufacture firearms," *id.* at 45, but Carver's supervisor declined this request because it was "ATF's long standing position that the business activities" in which Broughman engaged were "considered to be manufacturing activities, necessitating a manufacturer's license." *Id.* at 47.

In order to continue operating his business, Broughman obtained a manufacturer's license from ATF.[1] He then filed suit in federal district court

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[1] As the district court explained,

> there are differences between the obligations that accompany a manufacturer's license and a dealer's license. For example, the licensing fees are slightly more expensive in the long-term for manufacturers, compare 18 U.S.C. § 923(a)(1)(B) (manufacturers of firearms other than destructive devices must pay a licensing fee of fifty dollars per year) and 27 C.F.R. § 478.42(a)(2) (same) with 18 U.S.C. § 923(a)(3)(B) (dealers in firearms other than destructive devices must pay a two hundred dollar licensing fee for the first three years, with a ninety dollar renewal fee every three years thereafter) and 27 C.F.R. § 478.42(c)(2) (same); manufacturers have additional record keeping obligations, compare 27 C.F.R. § 478.123 (record keeping obligations specific to manufacturers) with 27 C.F.R. § 478.124 (firearms transaction record required for all licensed importers, manufacturers. and dealers) and 27 C.F.R. §§

seeking declaratory relief and judicial review under the Administrative Procedure Act. See 28 U.S.C. § 2201(a) & 5 U.S.C. § 702. Broughman's complaint requested the district court (1) declare that he is a "dealer," not a "manufacturer" under the GCA, (2) set aside ATF's determination that his business activities required a manufacturer's license, and (3) award such other relief, including costs and attorney's fees, as the court deemed appropriate.

The parties subsequently filed competing motions for summary judgment. After considering the parties' submissions, the district court rejected the proposition that Broughman could not "be both a manufacturer of firearms and a dealer of firearms" under the GCA, turned to the "ordinary meaning" of the word "manufacturing," and concluded that "assembling the component parts of a firearm" came within the ordinary meaning of that term. Broughman, 2009 WL 2511949, at *2. The district court accordingly held that Broughman's activities constitute firearms "manufacturing" and entered summary judgment in favor of ATF.

Broughman noted a timely appeal over which we have jurisdiction under 28 U.S.C. § 1291.

478.124a, .125(e) (firearms receipt and disposition records for dealers); and manufacturers must engrave each manufactured firearm with a serial number, see 18 U.S.C. § 923(i); 27 C.F.R. § 478.92, although ATF regulations permit manufacturers to apply for a variance, 27 C.F.R. § 478.92(a)(4).

Broughman, 2009 WL 2511949, at *1 n. 3.

II.

On appeal, Broughman contends that he meets the GCA's definition of a firearms "dealer" contained in 18 U.S.C. § 921(a)(11)(B), i.e., that he is a person "engaged in the business of ... making or fitting special barrels, stocks, or trigger mechanisms to firearms." This specific definition of a "dealer," in Broughman's view, renders the GCA's firearms "manufacturer" provision inapplicable because the GCA does not define a firearms "manufacturer." See 18 U.S.C. § 921(a)(10) (referring merely to those "engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution").

Because the GCA's terms regarding a firearms "dealer" are more precise, Broughman maintains the canon of statutory construction stating "the specific governs the general" should apply. Under this rule of construction, "[s]pecific terms prevail over the general in the same or another statute which otherwise might be controlling." Opening Brief at 6-7 (quoting *Fourco Glass Co.* v. *Transmirra Corp.*, 353 U.S. 222, 228-29 (1957). Broughman suggests that, in light of this rule, "however inclusive may be the definition of 'manufacturer' [under § 921(a)(1)], that definition cannot be held to apply to a person whose activities meet [§ 921(a)(11)(B)'s] definition of 'dealer.' " *Id.* at 7.

ATF responds that "Broughman's argument is premised on the false assumption th [at] he [cannot] be both a firearms 'manufacturer' under § 921(a)(10) and a firearms 'dealer' under § 921(a)(11)." Response Brief at 7. "[T]he GCA and the regulatory framework promulgated by ATF for implementation of the GCA,"

in ATF's view, "compel the conclusion that Congress recognized that a person could be both a firearms 'dealer' and a 'manufacturer.' " *Id.* As such, ATF would have us apply the ordinary meaning of the term "manufacturing" and conclude, based on "Broughman's admissions to Carver, Carver's observations of what Broughman was doing in his gun shop[,] and Broughman's own description of his acts in his amended complaint," that Broughman is engaged in the business of "manufacturing" firearms and must obtain a manufacturer's license. *Id.* at 8.

III.

Whether Broughman is a firearms "manufacturer" within the meaning of the GCA is "a question of statutory interpretation, a quintessential question of law, which we review de novo." *United States* v. *Joshua*, 607 F.3d 379, 382 (4th Cir.2010) (quotation omitted). Our objective in all cases of statutory interpretation is "to ascertain and implement the intent of Congress." *Scott* v. *United States*, 328 F.3d 132, 138 (4th Cir.2003). Because Congress' intent "can most easily be seen in the text of the Acts it promulgates," we begin with an examination of the statute's "plain text." *United States* v. *Wills*, 234 F.3d 174, 178 (4th Cir.2000).

The GCA's licensing requirement states: "No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General." 18 U.S.C. § 923(a); see also 27 C.F.R. § 478.41. In this case, the parties do not dispute

that Broughman's bolt-action rifles meet the GCA's definition of a "firearm," or that Broughman satisfies the statute's "engaged in the business" requirement. See 18 U.S.C. §§ 921(a)(3) & 921(a)(21)(A). Their disagreement solely concerns the GCA's distinction between "manufacturing" and "dealing" firearms.

Under the GCA, a firearms "manufacturer" is defined as "any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution." *Id.* § 921(a)(10). The statute does not further define the term "manufacturing firearms." In contrast, the GCA defines a firearms "dealer" in three distinct ways.[2] *See id.* § 921(a)(11). The pertinent part of the statutory definition at issue here states that a "dealer" is "any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms." *Id.* § 921(a)(11)(B).

"Absent explicit legislative intent to the

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[2] 18 U.S.C. § 921(a)(11) provides as follows:

> The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

While subsections A and C may also apply to some of Broughman's business activities, subsection B is the only provision relevant to the issue in this case.

contrary," we give the words of a statute their "plain and ordinary meaning." *Carbon Fuel Co.* v. *USX Corp.*, 100 F.3d 1124, 1133 (4th Cir.1996). The plain and ordinary meaning of the word "manufacture" is "to make into a product suitable for use." Merriam-Webster Online Dictionary (2010); *see also id.* (listing as related words "assemble, build, construct ... refashion, [and] remake"). We therefore conclude that manufacturing firearms under § 923(a) entails assembling a firearm's individual components so as to render the firearm "suitable for use."[3] The manner in which Broughman conducts his gun business; *i.e.*, "build[ing] custom bolt action rifles" by threading and chambering barrels to fit firearms actions, bluing the actions, and making and fitting stocks to the actions

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[3] We reject Broughman's contention that "manufacture," in context of the GCA, should be defined as the "creat[ion] [of] items 'from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations.' " Reply Brief at 5 n. 2 (quoting *Am. Fruit Growers, Inc.* v. *Brogdex Co.*, 283 U.S. 1, 11 (1931)). *American Fruit Growers* considered whether a certain process for rendering fruit resistant to decay constituted a "manufactured article" within the meaning of 35 U.S.C. § 31. 283 U.S. at 11. Given the patent-law context in which that case was decided, it is unsurprising the Supreme Court chose to utilize a definition of "manufacture" that focused on the originality of the resulting product. See *Ambrosia Chocolate Co.* v. *Ambrosia Cake Bakery*, 165 F.2d 693, 697 (4th Cir.1947) ("Only upon a clear showing of novelty and originality ... is a patent granted...."). Here, we are not concerned with whether Broughman's rifles were sufficiently original to warrant patent protection, but with whether they were "manufactured" within the meaning of the GCA. A more general definition of "manufacture," which is more suited to this context, therefore applies. See *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (recognizing that "we must be guided to a degree by common sense").

and barrels; undoubtedly places him within the statutory category of a firearms "manufacturer."

To circumvent the conclusion that he is "engaged in the business of manufacturing firearms" within the meaning of the GCA, Broughman points us to the well known canon of construction that "the specific governs the general." *Varity Corp.* v. *Howe*, 516 U.S. 489, 511 (1996). "Canons of construction, however, are simply rules of thumb which will sometimes help courts determine the meaning of legislation." *Id.* (quotations omitted). We have characterized the canon in question as merely "a warning against applying a general provision when doing so would undermine limitations created by a more specific provision." *Id.* Section 921(a)(11)(B)'s definition of a firearms "dealer" does not, however, impose any clear limitations that would be undermined by adhering to the plain text of § 921(a)(10). Moreover, Congress knows how to carve out firearms "dealers" from firearms "manufacturers" when it wishes to prevent any overlap of the two categories. Congress did so in the National Firearms Act of 1934 when it enacted mutually exclusive definitions of a firearms "manufacturer" and a firearms "dealer." See 26 U.S.C. § 5845(k) (stating that a "dealer" within the meaning of the National Firearms Act of 1934 is "any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms") (emphasis added). Congress has not similarly worded the GCA.

Broughman argues "the district court's holding

makes the definition of 'dealer' at issue here a complete nullity, with no effect whatever because any person who meets that definition would nonetheless be considered a manufacturer." Opening Brief at 8. We disagree. Circumstances certainly exist in which an individual would meet § 921(a)(11)(B)'s definition of a firearms "dealer" without qualifying as a firearms "manufacturer" under § 921(a)(10). Firearms "dealers" under § 921(a)(11)(A) and (C) are not firearms "manufacturers" and the same is true of many "dealers" under subsection (B). Certainly if Broughman only repaired firearms, fitted new stocks on rifles, or interchanged choke barrels, he would fit the definition of § 921(a)(11)(B) "dealer" but not that of a § 921(a)(10) "manufacturer."

Section 921(a)(11)(B) is thus not rendered superfluous by construing a "manufacturer" under § 921(a)(10), as both we and the district court have done, in accordance with its plain text. That the totality of Broughman's custom rifle building may fall under the "dealer" definition does not exclude him from being a "manufacturer" within the meaning of the Act because he meets that classification as well. Broughman's business consists of combining the essential parts of a firearm in order to make that firearm "ready for use," in the first instance, and that clearly qualifies him as a "manufacturer" under the GCA.[4]

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[4] We recognize that the GCA defines a "firearm" not only as "any weapon ... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," but also as "the frame or receiver of any such weapon." 18 U.S.C. § 921(a)(3). But this fact does not support Broughman's argument

In upholding the vitality of both the GCA's "dealing" and "manufacturing" provisions, we remain true to "our duty to give effect, if possible, to every clause and word of a statute." *United States* v. *Menasche*, 348 U.S. 528, 538-39 (1955) (quotation omitted). Adopting Broughman's position, in contrast, would go a long way towards reading the GCA's "manufacturing" provisions out of the Act. See *id.* at 539 (refusing to adopt an interpretation of a statute that would "emasculate an entire section" of the act). This result cannot be squared with Congress' intent in implementing the GCA.

We must "construe the details of [every statute] in conformity with its dominating general purpose ... and ... interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases [Congress'] generally expressed legislative policy." *SEC* v. *C.M. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943). In this case, the "regulatory goals" of the GCA are clear: "the Act ensure[s] that weapons [are] distributed through regular channels and in a traceable manner," thus making "possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms." *New York* v. *Burger*, 482 U.S. 691, 713 (1987) (quotation omitted). Severely limiting the application of the

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that he cannot be a firearms "manufacturer" because he does not create "the frame or receiver" used to fashion the bolt-action rifles in question. That Broughman manufactures "firearms" within the meaning of one statutory definition rather than another does not render him any less a manufacturer of "firearms" within the meaning of the Act.

GCA's "manufacturing" provisions would be inconsistent with these goals and would serve to "undermine the congressional policies" underlying the Act.[5] *Custer* v. *Sweeney*, 89 F.3d 1156, 1167 (4th Cir.1996); see also *RSM, Inc.* v. *Buckles*, 254 F.3d 61, 63 (4th Cir.2001) (explaining that, pursuant to the GCA, ATF "operates a firearms tracing system" that allows it to "track[ ] the movement of [a] weapon through the chain of distribution to the federal firearms licensee ... who ultimately sold the firearm to the retail purchaser").

We therefore conclude based on the GCA's plain language, "the specific context in which that language is used, and the broader context of the statute as a whole," *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 341 (1997), that Broughman is a "manufacturer" of firearms within the meaning of the Act. Section 923(a) thus requires Broughman to maintain a

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[5] We note that requiring Broughman to engrave his identifying information on the bolt-action rifles he creates is consistent with the existing regulatory scheme, which requires a "firearm frame or receiver that is not a component part of a complete weapon at the time it is sold [to be] identified as required by" 27 C.F.R. § 478.92(a)(1)(ii). 27 C.F.R. § 478.92(a)(2); see also id. § 478.92(a)(1)(ii) (instituting an engraving requirement encompassing a firearm's model and caliber, as well as the manufacturer's name and the city and state of the manufacturer's business). As the district court correctly noted, firearms manufacturers may apply to ATF for a variance allowing them to use "other means of identification," provided "such other identification is reasonable and will not hinder the effective administration" of the regulatory scheme. 27 C.F.R. § 478.92(a)(4)(i).

manufacturer's license.[6] Accordingly, we affirm the district court's grant of summary judgment in favor of ATF.

AFFIRMED

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[6] Under the existing regulatory scheme, Broughman's manufacturer's license entitles him to sell the bolt-action rifles he creates without separately obtaining a dealer's license. See 27 C.F.R. § 478.41(b) ("[I]t shall not be necessary for ... a licensed manufacturer to also obtain a dealer's license in order to engage in business on the licensed premises as a dealer in the same type of firearms authorized by the license to be ... manufactured.")

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ALLAN BROUGHMAN	)	**Civil No. 7:08-CV-00548**
Plaintiff,	)	
	)	**ORDER**
v.	)	
	)	**By: Samuel G. Wilson**
LARRY S. CARVER	)	**United States**
Defendant.	)	**District Judge**

Plaintiff Broughman has moved this court, pursuant to Fed.R.Civ.P. 59(e), to alter or amend its judgment. Broughman contends that the court made a clear error of law when it held that the terms "manufacturer" and "dealer" are not mutually exclusive. In particular, Broughman argues that the terms must be mutually exclusive because, to find otherwise, renders the term "manufacturer" meaningless. Broughman further points out that a court must "give effect, if possible, to every clause and word of a statute." *United States* v. *Menasche*. 318 U.S. 528, 538-539 (1955)(quoting *Montclair* v. *Ramsdell*. 107 U.S. 147, 152 (1883)).

The court previously found that the plain and ordinary meaning of the Gun Control Act of 1968, 18 U.S.C. 921 *et seq.*. does not support an interpretation that the terms "manufacturer" and "dealer" are mutually exclusive.[1] On the contrary, the court found

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[1] See notes 9 and 10 of the Memorandum Opinion of August 14, 2009.

that the statutory language is clear that an individual can be both a "manufacturer" and a "dealer."[2] Because Broughman's Motion fails to establish the court's interpretation renders the term "manufacturer" superfluous and, thus, that the court did not give effect to every clause and word of the statute, the court reaffirms its finding. It is, therefore, **ORDERED and ADJUDGED** that Broughman's Motion to Alter Judgment is **DENIED.**

ENTER: This September 8, 2009.

/s/
UNITED STATES DISTRICT JUDGE

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[2] In recognition of the overlap, the ATF has promulgated a regulation to simplify the licensing requirements for persons who qualify as both a manufacturer and a dealer of firearms. 27 C.F.R. § 478.41(b). Such persons need only obtain a manufacturer's license.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ALLAN BROUGHMAN	)	Civil No. 7:08-CV-00548
Plaintiff,	)	
	)	FINAL ORDER
v.	)	
	)	By: Samuel G. Wilson
LARRY S. CARVER	)	United States
Defendant.	)	District Judge

In accordance with the Memorandum Opinion entered on this day, it is **ORDERED** and **ADJUDGED** that Allan Broughman's request for this court to 1) declare that Broughman is a "dealer" and not a "manufacturer" under the Gun Control Act, 2) hold unlawful and set aside Larry S. Carver's command that Broughman obtain a manufacturer's license, and 3) award such other relief pursuant to 28 U.S.C. § 2412 is **DENIED.** Accordingly, summary judgment is **GRANTED** for Larry S. Carver in his official capacity as an Industry Operations Investigator with the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Enter: This 14th day of August 2009.

/s/
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ALLAN BROUGHMAN Plaintiff,	)	Civil No. 7:08-CV-00548
	)	**MEMORANDUM**
v.	)	**OPINION**
	)	**By: Samuel G. Wilson**
LARRY S. CARVER Defendant.	)	**United States** **District Judge**

Plaintiff Allan Broughman, a builder of custom bolt action rifles, brings this declaratory judgment action under 28 U.S.C. § 2201 against Defendant Larry S. Carver in his official capacity as an Industry Operations Investigator with the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). Broughman claims that Carver erroneously determined that Broughman needed a manufacturer's license under the Gun Control Act of 1968, 18 U.S.C. § 921 *et seq.* ("GCA"), to continue engaging in his rifle building activities. The matter is before the court on cross-motions for summary judgment. The court finds that in applying the plain and ordinary meaning of the GCA's statutory definitions, Broughman was a manufacturer of firearms and therefore was required to obtain a manufacturer's license. Accordingly, the court grants Carver summary judgment.

I.

Broughman, the sole operator of Broughman's Gun Shop in Covington, Virginia, builds custom rifles. (Administrative Record ("A.R.") 13.) To create these

rifles, Broughman "purchases complete firearms actions (frames or receivers[1] with internal parts) from other licensees, and purchases rifled barrels from other sources." (First Am. Compl. ¶ 6.) He then "threads and chambers the barrels to fit the actions, blues the actions, and makes wooden stocks which he fits to the actions and barrels." *Id.* He sells each firearm for several thousand dollars.

Broughman maintained a dealer's license under the GCA until Carver observed Broughman "assembling a barrel, a receiver, and a stock for a customer" during a routine compliance inspection of Broughman's business in late July 2006. (A.R.21.) After Broughman explained that "he had assembled the firearms and sold them for several thousand dollars," *id.*, Investigator Carver issued Broughman a Report of Violations. The first violation in that report was for "fail[ing] to obtain a license to manufacture firearms;" it required Broughman to discontinue any manufacturing activity until he applied for and obtained a manufacturer's license.[2] (A.R.30.)

In September 2006, Broughman, through

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[1] Pursuant to ATF regulations, a "firearm frame or receiver" is "[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel." 27 C.F.R. § 478.11.

[2] Broughman's second violation, not at issue here, was for failing to properly maintain his Firearms Acquisition and Disposition Record required under 27 C.F.R. § 478.125(e). (A.R.30.)

counsel, requested that the ATF remove this violation because Broughman's activities did not constitute manufacturing, and he therefore did not need a manufacturer's license. The ATF invited Broughman to attend a conference to discuss his violations, but Broughman declined. The ATF ultimately decided not to remove the violation due to its "long standing position" that Broughman's activities "are considered to be manufacturing activities, necessitating a manufacturer's license." (A.R.3.) That October, Broughman obtained a manufacturer's licence. In his application he described his firearm activities as "gunsmith building custom bolt action rifles" (A.R.90); on a supplemental form he also noted that he engaged in "gunsmith building custom bolt action rifles on actions made from other companies" (A.R.92). That same month, Broughman also allowed his dealer's license to expire.[3] (A.R.62.)

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[3] Under the GCA, there are differences between the obligations that accompany a manufacturer's license and a dealer's license. For example, the licensing fees are slightly more expensive in the long-term for manufacturers, compare 18 U.S.C. § 923(a)(1)(B) (manufacturers of firearms other than destructive devices must pay a licensing fee of fifty dollars per year) and 27 C.F.R. § 478.42(a)(2) (same) with 18 U.S.C. § 923(a)(3)(B) (dealers in firearms other than destructive devices must pay a two hundred dollar licensing fee for the first three years, with a ninety dollar renewal fee every three years thereafter) and 27 C.F.R. § 478.42(c)(2) (same); manufacturers have additional record keeping obligations, compare 27 C.F.R. § 478.123 (record keeping obligations specific to manufacturers) with 27 C.F.R. § 478.124 (firearms transaction record required for all licensed importers, manufacturers, and dealers) and 27 C.F.R. §§ 478.124a, .125(e) (firearms receipt and disposition records for dealers); and manufacturers must engrave each manufactured firearm with a

Pursuant to 28 U.S.C. § 2201, Broughman now brings this declaratory judgment action against Carver in his official capacity.[4]

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serial number, see 18 U.S.C. § 923(i); 27 C.F.R. § 478.92, although ATF regulations permit manufacturers to apply for a variance, 27 C.F.R. § 748.92(a)(4).

[4] The court finds that jurisdiction is proper under 28 U.S.C. § 1331 and the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.* The APA "waives the government's sovereign immunity from suit and permits federal court review of final agency actions, when the relief sought is other than money damages and the plaintiff has stated a claim 'that an agency or an officer or employee thereof acted or failed to act in an official capacity.' " *COMSTAT Corp.* v. *Nat'l Science Found.*, 190 F.3d 269, 274 (4th Cir.1999) (quoting 5 U.S.C. § 702); see also 5 U.S.C. § 704 (specifying that only "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review"). "[A]n agency action may be considered 'final' only when the action signals the consummation of an agency's decisionmaking process and gives rise to legal rights or consequences." *COMSTAT Corp.*, 190 F.3d at 274 (emphasis in original). Here, the ATF's determination that Broughman must obtain a manufacturer's license to continue his rifle building activities is a "final agency action" because it represents the consummation of the ATF's decisionmaking process and has given rise to legal rights and consequences. See *Sendra Corp.* v. *Magaw*, 111 F.3d 162, 166 (D.C.Cir.1997) (ATF's refusal to register a company's machinegun receivers under the National Firearms Act constitutes "final agency action").

In reviewing the ATF's determination, this court "shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U.S.C. § 706. This court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of

II.

Carver argues summary judgment is appropriate because Broughman is a manufacturer of firearms and not a dealer in firearms, and Broughman counters with the opposite. These arguments presume a definitional dichotomy that does not exist, and in reviewing the GCA's statutory and regulatory framework, the court finds that the dispositive question is simply whether Broughman is a manufacturer of firearms. The court concludes that he is, and accordingly grants Carver summary judgment.

Under the GCA, "[n]o person shall engage in the business of importing, manufacturing, or dealing in firearms ... until he has filed an application with and received a license to do so from the Attorney General." 18 U.S.C. § 923(a). In light of this unmistakably clear directive, this case distills to one simple question: under the Act, is Broughman is a manufacturer of firearms? If so, he needs a manufacturer's license.

The GCA defines a manufacturer as "any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution." 18 U.S.C. § 921(a)(10).[5] A "firearm" under the GCA

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discretion, or otherwise not in accordance with law." *Id.* § 706(2)(A).

[5] Although not at issue, the court notes that the statute further defines the term "engaged in the business," as applied to a manufacturer of firearms, as "a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the

includes "any weapon ... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," 18 U.S.C. § 921(a)(3)(A), or "the frame or receiver of any such weapon," § 921(a)(3)(B). Because the GCA does not define the term "manufacturing," the court applies the "fundamental canon of statutory construction ... that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin* v. *United States*, 444 U.S. 37, 42 (1979); *see also BP Am. Prod. Co.* v. *Burton*, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning.").

In applying the ordinary meaning of "manufacturing," the court concludes that Broughman meets the statutory definition of manufacturer.[6] Even

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firearms manufactured." 18 U.S.C. § 921(a)(21)(A).

[6] Broughman urges the court to adopt the dictionary definition of manufacturing that the Supreme Court adopted in Am. Fruit Growers, Inc. v. Brogdex Co., 283 U.S. 1, 51 S.Ct. 328, 75 L.Ed. 801 (1931), when the Court interpreted a patent statute: " '[m]anufacture,' ... is 'the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by handlabor or by machinery'; also 'anything made for use from raw or prepared materials.' " Id. at 11. Even if the court adopted this definition, Broughman's rifle building activities constitute manufacturing: whether by handlabor or machinery, Broughman is taking prepared materials-a firearm frame or receiver, barrel, and stock-and giving them a new form and combination-a "weapon ... designed to ... expel a projectile by the action of an explosive." § 921(a)(3)(A).

by his own words, Broughman "build[s] custom bolt action rifles" by assembling the component parts of a firearm. (A.R.90.) He purchases actions and barrels, fits the barrel to the action, blues the action, and attaches a wooden stock. The cumulative result of his labor is a "weapon ... designed to ... expel a projectile by the action of an explosive," a firearm that Broughman sells for commercial gain. § 921(a)(3)(B). Under these specific circumstances, the court readily concludes that Broughman is engaged in the business of manufacturing firearms and must therefore apply for and obtain a manufacturer's license. § 923(a).[7]

Broughman acknowledges that he "may be 'creating' a 'weapon ... which will ... expel a projectile by the action of an explosive.' " (Pl.'s Cross Mot. S.J. 12.) However, he argues that he only needs a dealer's

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[7] The ATF previously promulgated a regulation that defined "manufacture" and "the various derivatives thereof" to include "making, putting together, altering, any combination of these, or otherwise producing a firearm." 53 Fed.Reg. 10480, 10491 (Mar. 31, 1988). The District Court of South Carolina declared that regulation to be arbitrary and capricious because including the word "alter" within the regulatory definition could potentially confuse gunsmiths. *Nat'l Rifle Ass'n* v. *Brady*, No. 2:88-2518-8 (D.S.C. Aug. 15, 1989); see (Pl.'s Cross Mot. S.J. Ex. B.) The ATF did not appeal this invalidation, *Nat'l Rifle Ass'n* v. *Brady*, 914 F.2d 475, 478 n. 2 (4th Cir.1990), and removed this definition from its regulations, 56 Fed.Reg. 32507 (July 17, 1991).

Neither that regulation, nor the District Court of South Carolina's decision, control the outcome of this case. Here, the court is not deciding whether an ATF regulation is arbitrary and capricious, but is instead interpreting the statutory language and concluding that Broughman's firearm building activities fall within the plain and ordinary meaning of "manufacturing."

license because he meets the statutory definition of dealer. His argument is misplaced in light of the statutory and regulatory framework. A "dealer" under the Act means "(A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker." 18 U.S.C. § 921(a)(11). Because the CGA defines a firearm as a "frame or receiver," Broughman, by attaching a barrel and stock to previously purchased frames and receivers, is arguably "engaged in the business of ... making or fitting special barrels, stocks, or trigger mechanisms to firearms," and therefore meets the statutory definition of dealer. § 921(a)(11)(B).[8] But to insist that he only needs a dealer's license because he meets the definition of dealer incorrectly presumes that the GCA's definition of "manufacturer" and "dealer" are mutually exclusive. They are not,[9] and nothing in the GCA forecloses the

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[8] The court notes that the statute further defines the term "engaged in the business," as applied to this particular definition of dealer, as "a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms." 18 U.S.C. § 921(a)(21)(D). Broughman, however, does not maintain that he only engages in his firearm building activities on an occasional basis.

[9] This point becomes much more obvious when comparing the GCA's definitions with those contained in the National Firearms Act of 1934, 26 U.S.C. § 5801 et seq., because that Act defines an "importer" as "any person engaged in the business of

possibility that Broughman could be both a manufacturer of firearms and a dealer of firearms. In fact, as the parties otherwise recognize, § 923(a) presupposes the possibility that a single person may need multiple licenses to cover his firearm activities: if a person is engaged in the business of manufacturing firearms, he must procure a manufacturer's license, irrespective of whether he also is engaged in the business of dealing in firearms, or also engaged in the business of importing firearms. And in further recognition of § 923(a)'s overlap, the ATF has promulgated a regulation simplifying the licensing requirements for a person who manufacturers firearms and then deals in those same firearms: under those circumstances, "it shall not be necessary for a ... licensed manufacturer to also obtain a dealer's license in order to engage in business on the licensed premises as a dealer in the same type of firearms authorized by the license to be ... manufactured." 27 C.F.R. § 478.41(b). The mere possibility that Broughman deals in firearms does not erase the stubborn fact that he manufacturers firearms, and must therefore obtain a manufacturer's license. Accordingly, the court rejects Broughman's argument and grants Carver summary

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importing or bringing firearms into the United States," 26 U.S.C. § 5845(1); a "manufacturer" as "any person who is engaged in the business of manufacturing firearms," § 5845(m); and a "dealer" as "any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans," § 5845(k) (emphasis added).

judgment.[10]

III.

For the foregoing reasons, Carver's Motion for Summary Judgment is GRANTED and Broughman's

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[10] The parties have devoted much of their efforts in defining the level of deference the court owes to the ATF's interpretation of § 921(a)(11)(B)'s definition of dealer. The dispositive question before the court, however, is whether Broughman is a manufacturer under the Gun Control Act, and because the unambiguous statutory language supplies the answer, the court need not determine the deference it owes the ATF's interpretation. See *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 n. 9 (1984) ("If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect."); *Saintha* v. *Mukasey*, 516 F.3d 243, 251 (4th Cir.2008) ("Pursuant to Chevron, the plain meaning of the statute controls if the provision in question is unambiguous.").

Nonetheless, the court notes that the ATF's characterization of § 921(a)(11)(B)'s definition of dealer as the "gunsmith" exception is reasonably consistent with the statutory framework. See Webster's Ninth New Collegiate Dictionary 543 (1990) (defining "gunsmith" as "one who designs, makes, or repairs small firearms"). Under the GCA, a gunsmith who repairs a firearm is not a manufacturer because the gunsmith is only servicing a fully-manufactured "weapon ... designed to ... expel a projectile by the action of an explosive." § 921(a)(3)(B). The same is true for a gunsmith who purchases a fully-manufactured weapon, "fit[s] special barrels, stocks, or trigger mechanisms" to it, and then resells the firearm for commercial gain; it might be said that no manufacturing occurs in that situation because the gunsmith is only modifying a fully-manufactured weapon. But a gunsmith, like Broughman, who assembles component parts to create such a weapon is a manufacturer under the GCA, and accordingly must obtain a manufacturer's license.

Motion for Summary Judgment is DENIED.

Enter: This 14th day of August, 2009.

/s/
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-2095
(7:08-cv-00548-sgw-mfu)

ALLAN BROUGHMAN,

Plaintiff-Appellant,

v.

LARRY S. CARVER, Industry Operations Investigator, Bureau of Alcohol, Tobacco, Firearms & Explosives

Defendant-Appellee

ORDER

The petition for rehearing en banc was circulated to the full Court. No judge requested a poll under Fed. R. App. P. 35. The Court denies the petition for rehearing en banc.

For the Court
/s/ Patricia S. Connor, Clerk